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**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MUR: 7119

DATE COMPLAINT FILED: Aug. 4, 2016

DATE OF NOTIFICATION: Aug. 11, 2016

DATE OF LAST RESPONSE: Nov. 27, 2016

DATE ACTIVATED: Nov. 29, 2016

EXPIRATION OF SOL: July 6, 2021

ELECTION CYCLE: 2016

**COMPLAINANT:**

American Democracy Legal Fund

**RESPONDENTS:**

Donald J. Trump

Donald J. Trump for President, Inc.

and Timothy Jost in his official capacity  
as treasurer

Americans for Liberty and Free Enterprise

and Gary F. Fox II in his official capacity  
as treasurer

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30102(c)

52 U.S.C. § 30104(b)

52 U.S.C. §§ 30116(a)(1), 30116(f)

52 U.S.C. § 30118(a)

11 C.F.R. § 109.20

11 C.F.R. § 104.3

**INTERNAL REPORTS CHECKED:**

Disclosure reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

The Complaint in this matter alleges that Americans for Liberty and Free Enterprise ("ALFE"), an independent-expenditure-only political committee, coordinated with and thereby contributed to Donald J. Trump's authorized presidential campaign committee, Donald J. Trump for President, Inc. (the "Trump Committee"), by paying for a campaign rally that featured a purported Trump Committee campaign staffer as a speaker. The Trump Committee and ALFE

1 both deny that the event was coordinated with the Trump Committee and that the individual who  
2 spoke at the event was a Trump Committee campaign staffer.

3 The available record provides insufficient factual support for the allegation that ALFE  
4 coordinated with the Trump Committee as alleged. Accordingly, we recommend that the  
5 Commission find no reason to believe that Respondents violated the law by making coordinated  
6 expenditures. However, we also recommend that the Commission find reason to believe that  
7 ALFE violated 52 U.S.C. § 30104(b) by not filing required periodic disclosure reports with the  
8 Commission, and authorize the use of compulsory process, if necessary, to investigate the scope  
9 of ALFE's failure to report its activity since its registration in 2015.

## 10 II. FACTUAL BACKGROUND

11 ALFE filed a Statement of Organization with the Commission as an independent-  
12 expenditure-only political committee that was dated June 2, 2015, but was received on  
13 November 3, 2015. Its treasurer of record is Gary F. Fox II. ALFE has never filed a disclosure  
14 report with the Commission since registering as a committee. Donald J. Trump was a 2016  
15 candidate for President of the United States. His authorized committee filed a statement of  
16 organization with the Commission on June 29, 2015. Its treasurer of record is Timothy Jost.

17 The Complaint, citing local news articles, alleges that ALFE coordinated with and  
18 thereby made prohibited in-kind contributions to the Trump Committee by (1) paying expenses  
19 resulting from an event held in Loudoun County, Virginia, on July 6, 2016, and (2) featuring a  
20 "Trump for President campaign staffer" named "Juli Haller" as a speaker at that event.<sup>1</sup> The

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<sup>1</sup> Compl. at 2, 3 (Aug. 4, 2016) (citing Norman K. Styer, "Trump Supporters Gear Up for Loudoun Campaign," Loudoun Now (July 7, 2016) <http://loudounnow.com/2016/07/07/trump-supporters-gear-up-loudoun-campaign>; Hannah Dellinger, "Loudoun Republican leaders to host Trump 'Unity Rally' in Leesburg," Loudoun Times-Mirror (July 6, 2016)).

1 Complaint also alleges that ALFE failed to file required disclosure reports with the Commission,  
2 including a 2016 Year-End Report and an April 2016 Quarterly Report.<sup>2</sup>

3 ALFE, through its Executive Vice President, Bryan Crosswhite, provided an email  
4 response denying the coordination allegations. ALFE claims that at the event in question, “not  
5 \$1 was spent or given to the Trump Campaign” and “Heller [sic] . . . was a volunteer with the Va  
6 Trump team at the time and no paid staff were present.”<sup>3</sup> The Response also offers that “ALFE  
7 was invited to speak” at the event about its “efforts to help inner city people move into business  
8 ownership and stimulate the economy.”<sup>4</sup> ALFE did not address the allegation that it has failed to  
9 file required periodic disclosure reports with the Commission.

10 The Trump Committee argues that the Complaint fails to provide sufficient factual  
11 support for the coordination allegations.<sup>5</sup> Its Response points out that the event in question was  
12 organized by ALFE, not the Trump Committee, and that the speaker in question, Juli Haller, was  
13 not a paid campaign staffer or otherwise an agent of the Trump Committee.<sup>6</sup> The Response  
14 asserts that Haller spoke at the event as a Trump supporter who may have been a volunteer for  
15 the campaign. Moreover, the Trump Committee argues that even if a paid campaign staffer had  
16 spoken at an event paid for by a Super PAC, that would not satisfy the “conduct prong” of the  
17 Commission’s coordination regulations, *i.e.*, it would not constitute prohibited “coordination”  
18 between the campaign and the Super PAC.<sup>7</sup>

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> ALFE Resp. at 1 (Nov. 27, 2016).

<sup>4</sup> *Id.*

<sup>5</sup> Trump Cmte. Resp. at 2 (Sept. 27, 2016).

<sup>6</sup> *Id.* at 3.

<sup>7</sup> *Id.* at 4.

**III. FACTUAL AND LEGAL ANALYSIS**

**A. Coordinated Expenditures**

**1. Legal Standard**

The Federal Election Campaign Act of 1971, as amended ("Act"), provides that a contribution includes "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office."<sup>8</sup> The Act defines an expenditure as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office."<sup>9</sup> "Anything of value" in either context includes all in-kind contributions.<sup>10</sup> An expenditure is "coordinated" if it is "made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate [or] the candidate's authorized committee."<sup>11</sup> Any coordinated expenditure constitutes an in-kind contribution to the federal candidate or committee with whom, or with which, it is coordinated.<sup>12</sup>

Independent-expenditure-only political committees are permitted to solicit and raise unlimited contributions, and can receive contributions from corporations and labor unions, *i.e.*, they may solicit and receive funds outside the Act's limitations and source prohibitions.<sup>13</sup> As such, however, they may only make independent expenditures, and are not permitted to make

<sup>8</sup> 52 U.S.C. § 30101(8)(A)(i).

<sup>9</sup> 52 U.S.C. § 30101(9)(A)(i).

<sup>10</sup> 11 C.F.R. §§ 100.52(d)(1), 100.111(e)(1).

<sup>11</sup> 11 C.F.R. § 109.20(a); *see also* 52 U.S.C. § 30101(17) ("The term 'independent expenditure' means an expenditure . . . (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.").

<sup>12</sup> 11 C.F.R. § 109.20(b).

<sup>13</sup> *See Citizens United v. FEC*, 558 U.S. 310 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010); Advisory Op. 2010-11 (Commonsense Ten) (July 22, 2010); *see also* 52 U.S.C. §§ 30116(a)(1), 30118(a).

1 any contributions directly to candidates, including in-kind contributions via coordinated  
2 expenditures, which would be excessive or prohibited contributions under the Act.<sup>14</sup>

3 2. The Available Record Does Not Support a Reasonable Inference that  
4 ALFE Coordinated with the Trump Committee

5 Complainant alleges that ALFE coordinated with the Trump Committee when it  
6 “sponsored a Trump for President campaign unity rally that included speeches from Juli Haller, a  
7 Trump for President campaign staffer.”<sup>15</sup> The available record does not support the allegation  
8 that ALFE impermissibly coordinated with the Trump Committee by hosting a “unity rally”  
9 event, or by featuring a Trump Committee staffer as a speaker at that event.

10 First, the record does not provide any facts to support a conclusion or inference that the  
11 Trump Committee was involved in sponsoring, planning, or holding the event. ALFE and the  
12 Trump Committee both maintain that the event was sponsored by ALFE, and not by the Trump  
13 Committee.<sup>16</sup> Indeed, ALFE featured a flier on its website that indicates the event was  
14 sponsored by ALFE.<sup>17</sup> One of the news articles cited in the Complaint called the event a “Trump  
15 unity rally” but clarified that “[t]he event was organized by [ALFE], a PAC that aims to  
16 reconnect the Republican Party to urban voters.”<sup>18</sup> Another article also referred to the event as  
17 an ALFE event.<sup>19</sup> The event was held at a restaurant owned by Bryan Crosswhite, the Executive

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<sup>14</sup> See 52 U.S.C. §§ 30116(a)(1), 30116(f), 30118(a); *Commonsense Ten* at 2-3.

<sup>15</sup> Compl. at 2.

<sup>16</sup> Trump Cmte. Resp. at 3; ALFE Resp. at 1. Another news article’s title described the “unity rally” as an event being hosted by “Loudoun [County] Republican leaders.” Dellinger, *supra*.

<sup>17</sup> “NORTHERN VA UNITE RALLY – WEDNESDAY, JULY 6TH AT 7PM!” <http://www.alfepac.org/2016/06/08/restoring-american-values> (viewed Dec. 5, 2016).

<sup>18</sup> See Styer, *supra*.

<sup>19</sup> See Sydney Kashigawi, “GOP super PAC urges on-the-fence voters to support Trump,” Loudoun Times-Mirror (July 6, 2016), [http://www.loudountimes.com/news/article/gop\\_super\\_pac\\_urges\\_on\\_the\\_fence\\_republicans\\_to\\_join\\_their\\_cause\\_support456](http://www.loudountimes.com/news/article/gop_super_pac_urges_on_the_fence_republicans_to_join_their_cause_support456).

1 Vice President of ALFE, and ALFE President Kenn Blanchard addressed the gathering via  
2 FaceTime video.<sup>20</sup> In addition, the Trump Committee specifically denies the assertion that it was  
3 a campaign event, characterizing it as a “unity rally . . . organized by ALFE PAC,” and ALFE  
4 also denies that any money “was spent or given to the Trump Campaign.”<sup>21</sup>

5 Second, the available facts show only that a person associated with the Trump  
6 Committee, Juli Haller, attended and spoke at an ALFE event, and that does not demonstrate  
7 impermissible “coordination” between ALFE and the Trump Committee. An ALFE flier for the  
8 event features Haller’s image under “Speakers” with the caption “Juli Haller / Trump 2016.”  
9 Various news articles also associated Haller with the campaign, but stopped short of identifying  
10 her with any official role or title: one article referred to her as “Trump campaign representative  
11 Juli Haller” while the other called her “Juli Haller with the Trump campaign.”<sup>22</sup> Nevertheless,  
12 both ALFE and the Trump Committee assert that Haller was a volunteer, not a paid staffer or  
13 agent. ALFE further indicates that no paid staff were present at the unity rally, and the Trump  
14 Committee contends that any “appellations” applied to Haller by the press were “unverified” and  
15 incorrect.<sup>23</sup> Nothing in the available record undermines ALFE’s and the Trump Committee’s

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<sup>20</sup> Styer, *supra*.

<sup>21</sup> Trump Cmte. Resp. at 3; ALFE Resp. at 1. The available information indicates that the event was hosted and paid for by ALFE. Responding to the Complaint on behalf of ALFE, Bryan Crosswhite offered that “ALFE was invited to speak” at the event about the committee’s “efforts to help inner city people move into business ownership and stimulate the economy,” but it does not appear that ALFE was “invited” by another group or entity. Indeed, the event was hosted at a restaurant that Crosswhite owns. Instead, Crosswhite’s comment might simply reflect that ALFE was not the only group that featured a speaker at the gathering: the “speakers” at the event were — according to the event flier — Crosswhite, ALFE President Kenn Blanchard, Juli Haller for “Trump 2016,” and Loudon County Republican Committee Chairman Will Estrada. As discussed further, ALFE and the Trump Committee deny that Haller was a paid staffer or was otherwise authorized to speak on behalf of the Trump Committee. See *infra* note 23.

<sup>22</sup> Styer, *supra*; Kashigawi, *supra*.

<sup>23</sup> Trump Cmte. Resp. at 3; ALFE Resp. at 1.

1 assertions that Haller was a volunteer, and Haller's appearance at the event does not constitute  
2 "coordination" for the purposes of the Act.<sup>24</sup>

3 Finally, there is no evidence that the Trump Committee requested or suggested that  
4 ALFE sponsor the event, or that ALFE was acting in cooperation, consultation, or concert with  
5 the Trump Committee with regard to the event. The available record therefore does not support  
6 the allegation that ALFE coordinated the event with the Trump Committee. We therefore  
7 recommend that the Commission find no reason to believe that Respondents may have violated  
8 52 U.S.C. §§ 30116(a)(1), 30118(a), 30116(f) by making or knowingly accepting prohibited or  
9 excessive in-kind contributions.

#### 10 **B. Reporting Violations**

11 Under the Act, political committees must maintain an accurate account of their receipts,  
12 disbursements, and cash-on-hand balances, and must accurately report those amounts in periodic  
13 public filings with the Commission.<sup>25</sup>

14 The available record indicates that ALFE has not filed any required disclosure reports  
15 since registering as a political committee. Nevertheless, ALFE maintains a website soliciting  
16 contributions, and it may be engaged in unreported activity.<sup>26</sup> Accordingly, we recommend that  
17 the Commission find reason to believe that ALFE violated 52 U.S.C. § 30104(b).

#### 18 **IV. PROPOSED INVESTIGATION**

19 Our investigation would focus on obtaining information regarding ALFE's unreported  
20 activity during the period in which ALFE has failed to file required disclosure reports with the

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<sup>24</sup> See 11 C.F.R. § 109.20(a).

<sup>25</sup> 52 U.S.C. §§ 30102(c), 30104(b); see 11 C.F.R. § 104.3.

<sup>26</sup> "Americans for Liberty and Free Enterprise," <https://causes.anedot.com/general-fund-cd96bce0cb814da9773f9> (viewed Dec. 6, 2016).

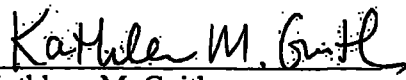
Commission. We will attempt to obtain this information voluntarily, but recommend that the Commission authorize the use of compulsory process.

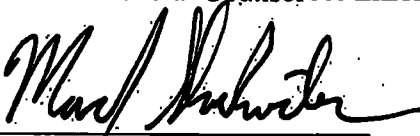
**V. RECOMMENDATIONS**

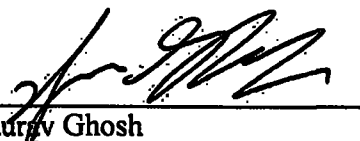
1. Find no reason to believe that Americans for Liberty and Free Enterprise and Gary F. Fox II in his official capacity as treasurer violated 52 U.S.C. §§ 30116(a)(1), 30118(a);
2. Find no reason to believe that Donald J. Trump, Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer violated 52 U.S.C. § 30116(f);
3. Find reason to believe that Americans for Liberty and Free Enterprise and Gary F. Fox II in his official capacity as treasurer violated 52 U.S.C. § 30104(b);
4. Approve the attached Factual and Legal Analyses;
5. Close the file as to Donald J. Trump, Donald J. Trump for President, Inc. and Timothy Jost in his official capacity as treasurer;
6. Authorize the use of compulsory process; and
7. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Date: 2-21-17

  
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